

Express Mail Label No.: EV392-773 US
Date of Deposit: October 8, 2004

Attorney Docket No. 15966-557A (Cura 57A)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Jeffers, et al.
SERIAL NUMBER : 09/992,840 EXAMINER : Not Yet Assigned
FILING DATE : November 6, 2001 ART UNIT : Not Yet Assigned
FOR : TREATMENT OF INFLAMMATORY BOWEL DISEASE USING GROWTH
FACTORS

Mail Stop: Licensing & Review
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

**PETITION FOR FILING PATENT APPLICATION
WHEN AN INVENTORS REFUSE TO EXECUTE UNDER 37 C.F.R. § 1.47(a)**

1. Further to the Decision on Petition filed June 22, 2004, and pursuant to 35 U.S.C. § 116 and 37 C.F.R. § 1.47(a), the undersigned hereby petitions to allow each of the signing inventors to make this application on his or her behalf well as on behalf of the non-signing inventor Elma Fernandes. Applicant has attached a Declaration in Support of 37 C.F.R. § 1.47 filing ("Carlucci Declaration") signed by Nicole Carlucci, an Administrative Assistant of Intellectual Property of CuraGen Corporation for U.S.S.N. 09/992,840 filed November 6, 2001. Applicants also enclose the fees set forth in 37 C.F.R. § 1.17(h).
2. The inventors of the invention claimed in the above-referenced application are Michael Jeffers, Richard Shimkets, Sudhirdas Prayaga, Ferenc Boldog, Meijia Yang, Catherine Burgess, Elma Fernandes, Beth Rittman, Juliette Shimkets, William LaRoche, and Henri Lichenstein. Co-inventor Elma Fernandes refused to execute the Combined Declaration and Power of Attorney for this application. As required, Applicants enclose herewith copies of counterparts of the Combined Declaration and Power of Attorney form executed by the other co-inventors.
3. CuraGen Corporation employed Elma Fernandes (as well as other co-inventors), at the time the invention claimed in the present application, U.S.S.N. 09/992,840, which claims priority to USSN 60/246,206, filed 6 November 2000, was conceived and reduced to practice. A copy of a CuraGen Corporation employment agreements executed by Elma Fernandes on November 2, 1998, is attached to this petition. Under this agreement Elma Fernandes is obligated to execute any and all applications for domestic and foreign patents covering inventions conceived, made, or discovered during the course of their employment.

APPLICANTS: Jeffers, et al.
U.S.S.N.: 09/992,840

4. The accompanying Carlucci Declaration in Support of 37 C.F.R. § 1.47 filing sets forth the pertinent facts demonstrating that CuraGen Corporation has been unable to locate Elma Fernandes after multiple attempts, and therefore, she is unavailable to sign any patent applications for her former employer, CuraGen Corporation. The Exhibits to the declaration include correspondence between CuraGen Corporation and Elma Fernandes about this application (U.S.S.N. 09/992,840 filed November 6, 2001) and the USPS Priority Mail Label of the final attempt September 28, 2004 to deliver the package to Fernandes.

5. Thus, based upon the record of correspondence to date set forth in the Carlucci Declaration, Elma Fernandes is unavailable to execute the Combined Declaration and Power of Attorney and to make application as joint inventors of the present application, after multiple reasonable efforts to locate her.

6. Under the requirements set forth under 37 C.F.R. § 1.47, the last address of Elma Fernandes known to the undersigned is:

P.O. Box 8120
Bridgewater, NJ 08807

7. Based upon the pertinent facts presented herein and in the Declaration, the undersigned hereby respectfully requests that application for the above-identified invention be made by each of the signing co-inventors on his or her behalf and on the behalf of the nonsigning co-inventor Elma Fernandes. To that end, the undersigned, on behalf of the signing co-inventors, respectfully requests consideration and grant of this petition for filing the patent application by less than all of the co-inventors pursuant to 37 C.F.R. § 1.47(a).

Should the Commissioner have any questions concerning this petition, he is invited to telephone the undersigned at the number provided.

Respectfully submitted,

Dated: October 8, 2004

Ivor R. Elrifi, Reg. No. 39,529
Kristin E. Konzak, Reg. No. 44,848
Attorneys for Applicants
c/o MINTZ, LEVIN
Tel: (617) 542-6000
Fax: (617) 542-2241
Customer No. 30623

Express Mail No. EV392157773
Date of Deposit: October 8, 2001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Fernandes, et al.
SERIAL NUMBER: 09/992840 **ART UNIT:** 1645
FILING DATE: November 6, 2001 **EXAMINER:** unknown
FOR: TREATMENT OF INFLAMMATORY BOWEL DISEASE GROWTH FACTORS

DECLARATION IN SUPPORT OF 37 CFR 1.47 FILING

I, NICOLE Carlucci, declare that:

- (1) I am employed as a Legal Specialist in the Intellectual Property Office of CuraGen Corporation; have a mailing address at CuraGen Corporation, 555 Long Wharf Drive, New Haven, Connecticut 06511; and am responsible for seeing that the combined Declaration and Power of Attorney, and Assignment documents for patent applications filed on behalf of CuraGen's employees are fully executed and filed with the United States Patent and Trademark Office;
- (2) CuraGen Corporation contracted with the Boston, Massachusetts law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., to prepare and file the above-captioned United States patent application on its behalf;
- (3) Elma Fernandes ("FERNANDES") is a named inventor for the subject matter described in the above-captioned patent application;
- (4) FERNANDES was employed by CuraGen Corporation from November 2, 1998, until her termination effective April 25th 2002;
- (5) At the time of FERNANDES employment she executed an Agreement in which she agreed to assign her "full right, title and interest in and to all inventions" to CuraGen Corporation, and agreed "to execute any and all applications for domestic and foreign patents, copyrights or other proprietary rights and to do such other acts ... requested by Company to assign the

Inventions to the Company and permit the Company to file, obtain and enforce any patents, copyrights or other proprietary rights in the Inventions" (this obligation is contained in paragraph 1 of the attached true copy of the Employee Confidential Information and Invention Agreement as executed by FERNANDES on November 2, 1998.

- (6) On September 17, 2004, I sent FERNANDES a letter, a true copy of which is attached hereto, enclosing a photocopy of the above-captioned United States patent application as filed, a Combined Declaration and Power of Attorney and an Assignment document for execution in accordance with her obligations to execute the same under the terms of her November 2nd 1998 Agreement;
- (7) The package was sent to her last known address and was returned to us undelivered.
- (8) As of today, October 5, 2004 we have not been able to locate Fernandes or another address for her.

All statements made in this Declaration are true, and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Title 18, Section 1001 of the United States Code, and that any such willful false statement may jeopardize the validity of any United States Letters Patent resulting from the above-captioned United States patent application.

Dated this 5th day of October 2004 by: Nicole Carlucci
Nicole Carlucci

Express Mail No. EV392157773U

Date of Deposit: October 8, 2004



CuraGen
Corporation

Intellectual Property Department
555 Long Wharf Drive, 9th Floor
New Haven, CT 06511
(203) 401-3330
(203) 401-3351 Fax
www.curagen.com

September 17, 2004

Priority Mail

Elma Fernandes

PO BOX 8120

Bridgewater, NJ. 08807

Re: Formal Documents for Execution

Dear Elma:

Enclosed, please find Assignment and Combined Declaration and Power of Attorney for Cura 57A. In order for CuraGen to continue prosecution for this case, we ask that you complete the following:

- Review the application
- Review the formal documents
- Make any changes and initial in blue ink(i.e. change of address)
- Execute where indicated with blue ink

Please return the executed documents to me as soon as possible, no later than Friday, September 24, 2004 via FEDEX to CuraGen Corporation 555 Long Wharf Drive New Haven, CT. 06511 (CuraGen account no. 2264-2089-4)(return envelope enclosed), charging the service to us.

We appreciate your assistance and apologize for any inconvenience. But as you may recall from your time at CuraGen, this is a legal requirement and we have no choice but to ask you to execute these documents. Thanks for all your help and if you have any concerns or questions, please let me know.

Sincerely,

Nicole Carlucci
US Patent Specialist

00-222-1811



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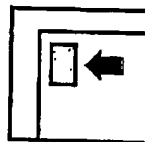
www.usps.

HOW TO USE:



1. COMPLETE ADDRESS LABEL AREA

Type or print required return
address and addressee information
in customer block (white area)
or on label (if provided).



2. PAYMENT METHOD

Affix postage or meter strip to area
indicated in upper right hand corner.



3. ATTACH LABEL (if provided)

Remove label backing and adhere
over customer address block area
(white area).

P

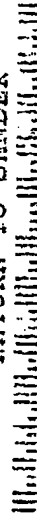
U.S. POSTAGE
REQUIRED

USPS PRIORITY MAIL®

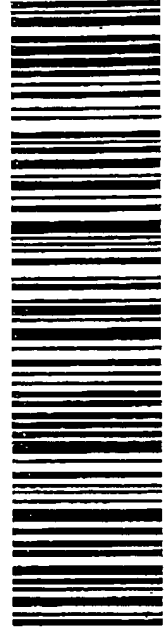
NICOLE M CARLUCCI
CURAGEN CORPORATION
555 LONG WHARF DRIVE 9TH FLOOR
NEW HAVEN CT 06511

FERN120 359073014 1803 05 05/28/04
FORWARD TIME EXP RTN TO SEND
FERNANDES
232 NCAULIFFE CT
SOMERSET NJ 08873-1764

RETURN TO SENDER



ZIP - e/ USPS DELIVERY CONFIRMATION™



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The efficient F
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Express Mail No. EV392 7773US
Date of Deposit: Octol 8, 2004

CuraGen Corporation

**EMPLOYEE CONFIDENTIAL INFORMATION
AND INVENTION AGREEMENT**

Whereas, Elma Fernandez⁵ (the "Employee") is about to enter or continue in the employ of the CuraGen Corporation, a Delaware corporation having its principal place of business at 555 Long Wharf Drive, New Haven, CT 06511 (the "Company"), and in such employment will or may become informed as to many of its procedural, commercial and technical needs, problems, developments and projects, as well as activities directed thereto,

In consideration of said employment being given or continued and the compensation therein, it is agreed as follows:

PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY

1. Employee shall promptly disclose to the Company all Inventions. Inventions shall mean, for purposes of this paragraph, inventions, discoveries, developments, methods and processes (whether or not patentable or copyrightable or constituting trade secrets) conceived, made or discovered by Employee (whether alone or with others) while employed by the Company and that relate, directly or indirectly, to the past, present, or future business activities, research, product design or development, personnel, and business opportunities of the Company, or result from tasks assigned to Employee by the Company or done by Employee for or on behalf of the Company. Employee hereby assigns and agrees to assign to the Company (or as otherwise directed by the Company) his full right, title and interest in and to all Inventions. Employee agrees to execute any and all applications for domestic and foreign patents, copyrights or other proprietary rights and to do such other acts (including, among others, the execution and delivery of instruments of further assurance or confirmation) requested by the Company to assign the Inventions to the Company and to permit the Company to file, obtain and enforce any patents, copyrights or other proprietary rights in the Inventions. Employee agrees to make and maintain adequate and current written records of all Inventions, in the form of notes, sketches, drawings, or reports relating thereto, which records shall be and remain the property of and available to the Company at all times.

2. All designs, ideas, inventions, improvements, and other creations made or owned by Employee before becoming an employee of the Company and which Employee desire to exempt from this Agreement are listed on Attachment A hereof and authorized for exclusion by the signature of an Officer of the Company. (If Employee does not have any such designs, ideas, inventions, improvements, or other creations write "none" on this line: _____)

See Attachment A

3. Employee agrees to notify the Company in writing before Employee makes any disclosure or performs or causes to be performed any work for or on behalf of the Company, which appears to threaten or conflict with (a) rights Employee claims in any invention or idea conceived by Employee or others prior to Employee's employment, or (ii) otherwise outside the

scope of this Agreement; or (b) rights of others arising out of obligations incurred by Employee (i) prior to this Agreement, or (ii) otherwise outside the scope of this Agreement. In the event of Employee's failure to give notice under the circumstances specified, the Company may assume that no such conflicting invention or idea exists and Employee agrees that Employee will make no claim against the Company with respect to the use of any such invention or idea in any work which Employee performs or causes to be performed for or on behalf of the Company.

PROPRIETARY AND TRADE SECRET INFORMATION

4. (a) The Employee agrees that he will keep confidential and will not make any unauthorized use or disclosure, or use for his own benefit or the benefit of others, during or subsequent to his employment of any research, development, engineering and manufacturing data, plans, designs, formulae, processes, specifications, techniques, trade secrets, financial information, customer or supplier lists or other information that becomes known to him as a result of his employment with the Company which is the property of the Company or any of its clients, customers, consultants, licensors, licensees, or affiliates, provided nothing herein shall be construed to prevent Employee from using his general knowledge and skill after termination of his employment whether acquired prior to or during his employment by the Company.

(b) Proprietary information subject to paragraph 4(a) does not include information that: (i) is or later become available to the public through no breach of this Agreement by the Employee; (ii) is obtained by the Employee from a third party who had the legal right to disclose the information to the Employee; or (iii) is required to be disclosed by law, government regulation, or court order.

5. During the course of his employment with the Company, the Employee will not accept information from sources outside of the Company which is designated as "Confidential," or "Proprietary," or "Trade Secret" without prior written permission from the Company or its attorneys. The Employee is not expected to and is expressly forbidden by the Company policy from disclosing to the Company "Trade Secret" or "Confidential" or "Proprietary" information from a former employer.

6. During his employment, or upon leaving the employment of the Company, the Employee will not remove from the Company premises, either directly or indirectly, any drawings, writings, prints, any documents or anything containing, embodying, or disclosing any confidential or proprietary information or any of the Company's trade secrets unless express written permission is given by the Company management. Upon termination of his employment, Employee shall return to the Company any and all documents and materials that are the property of the Company or its customers, licensees, licensors or affiliates or which contain information that is the property of the Company.

COMPETITIVE ACTIVITIES

7. (a) While in the employ of the Company and for a period of one year or the maximum period permitted by applicable law (whichever is shorter) following termination of his

employment with the Company, Employee shall not, without the approval of the Company, alone or as a partner, officer, director, consultant, employee, stockholder or otherwise, engage in any employment, consulting or business activity or occupation that is or is intended to be competitive with the business of the Company, as being considered, researched, developed, marketed and/or sold at the time of termination; provided, however, that the holding by Employee of any investment in any security shall not be deemed to be a violation of this Section 7 if such investment does not constitute over one percent (1%) of the outstanding issue of such security. This restriction shall run for a period of one year after said termination and if there shall be any violation hereof during said period, then for a period of one year after cessation of such violation.

(b) While in the employ of the Company, Employee shall promptly notify the Company, if Employee, alone or as a partner, officer, director, consultant, employee, stockholder or otherwise, engages in any employment, consulting or business activity or occupation outside his employment by the Company.

(c) You agree that you will provide, and that the Company may similarly provide in its discretion, a copy of this Agreement to any business or enterprise which you may directly, or indirectly, own, manage, operate, finance, join, control or in which you participate in the ownership, management, operation, financing, or control, or with which you may be connected as an officer, director, employee, partner, principal, agent, representative, consultant or otherwise.

GENERAL

8. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. The Employee agrees that the Company may assign this Agreement to any person or entity controlled by, in control of, or under common control with, the Company.

9. This Agreement constitutes the entire agreement between the parties as to the subject matter hereof. No provision of this Agreement shall be waived, altered or canceled except in writing signed by the party against whom such waiver, alteration or cancellation is asserted. Any such waiver shall be limited to the particular instance and the particular time when and for which it is given.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut.

11. The invalidity or unenforceability of any provision hereof as to an obligation of a party shall in no way affect the validity or enforceability of any other provision of this Agreement, provided that if such invalidity or unenforceability materially adversely affects the benefits the other party reasonably expected to receive hereunder, that party shall have the right to terminate this Agreement. Moreover, if one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity or subject so as to be unenforceable at law, such provision or provision shall be construed by limiting or

reducing it or them, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

IN WITNESS WHEREOF, I have duly executed this Agreement as of this 2nd day of November, 1998.

Employee Name: Elma Fernandez

Employee Signature: *Elma Fernandez*

Address:

77 ELIZABETH RD. #2B
BRADFORD CT 06405

Attachment A

Research relating to the following genes

1. E4F
2. ELF-2
3. RHOMBOTIN-2
4. Bob1

and derived from initial research relating to these genes.

Elma R. Fernandez

11/2/98

ELMA R. FERNANDES

*** RX REPORT ***

RECEPTION OK

TX/RX NO	8671
RECIPIENT ADDRESS	617 542 2241
DESTINATION ID	
ST. TIME	07/01 13:43
TIME USE	03'33
PGS.	15
RESULT	OK

To: John Gillan 7/1/05

Re: 09/992,840

Fax # 571 273-0025

John,

To follow up on our phone conversation,
enclosed are the papers originally filed on 10/8/04
relating to the Rule 47 petition for ISSN
09/992.840.

Naomi Biswas

Naomi Biswas

38,384

617 348-4401

Express Mail Label No.: EV3921 73US
Date of Deposit: October 8, 2004

Attorney Docket No. 15966-557A (Cura 57A)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Jeffers, et al.
SERIAL NUMBER : 09/992,840 EXAMINER : Not Yet Assigned
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FACTORS

Mail Stop: Licensing & Review
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P.O. Box 1450
Alexandria VA 22313-1450

TRANSMITTAL LETTER

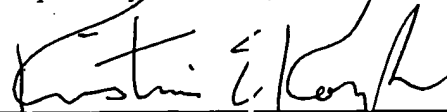
Transmitted herewith for filing in the above-referenced patent application are the following documents:

1. Petition For Filing Patent Application When Inventors Refuse to Execute under 37 C.F.R. § 1.47(a) (2 pgs.)
2. Check No. 19449 in the amount of \$130.00 to cover the Petition fee;
3. Declaration of Nicole Carlucci in Support of C.F.R. § 1.47(a) filing for Elma Fernandes (2 pgs.);
 - a. Letter of September 17, 2004 to Elma Fernandes (1 pg.);
 - b. Copy of the PRIORITY MAIL RECEIPT to Fernandes (1 pg.);
 - c. Employee agreement for Elma Fernandes (5 pgs.); and
4. Return postcard.

If the enclosed papers are considered incomplete, the Mail Room and/or the Application Branch is respectfully requested to contact the undersigned at 617-542-6000, Boston, Massachusetts.

The Commissioner is authorized to charge any additional fees that may be due, or to credit any overpayment, to the undersigned's account, Deposit Account No. 50-0311, Rel. No. 15966-557A (CURA 57A). A duplicate copy of this transmittal letter is enclosed herewith.

Respectfully submitted,



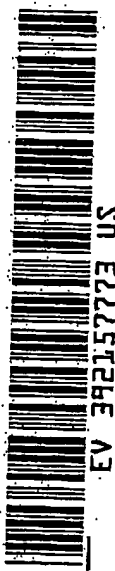
Ivor R. Elrifi, Reg. No. 39,529
Kristin E. Konzak, Reg. No. 44,848
Attorneys for Applicants
c/o MINTZ, LEVIN
Tel: (617) 542-6000
Fax: (617) 542-2241
Customer No. 30623

Dated: October 8, 2004

EV392157773US

Customer Copy
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 BOSTON MA 02111-2621

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 P.O. Box 1450
 Alexandria, VA 22313-1450

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Serial No. 09/992,840 File No. 15966-557A(Cura57A) by: IRE/KEK
 Title: Treatment of Inflammatory Bowel Disease Using Growth Factors
 Application of Jeffers, et al. (date: Nov. 6, 2001)
 The U.S. PTO Mail Room acknowledges receipt of the following on the date stamped hereon:

<input type="checkbox"/> Req. for CPA under 37 CFR 1.53(d)	<input type="checkbox"/> Provisional Application Cover Sheet
<input type="checkbox"/> Change of Attorney's Address	<input type="checkbox"/> Inf. Disc. Statement, PTO Form 1449
<input type="checkbox"/> New Power of Attorney	<input type="checkbox"/> References Cited
<input type="checkbox"/> Patent Application	<input type="checkbox"/> Copy of Notice to File Missing Parts
<input type="checkbox"/> Non-provisional <input type="checkbox"/> Provisional	<input type="checkbox"/> Amendment/Response
Incl. _____ pages, (_____ pgs) Specification,	<input type="checkbox"/> Petition for Ext. of Time (x2)
(_____ pgs) Abstract, (_____ pgs) Claims (_____ # claims)	<input type="checkbox"/> Issue Fee Transmittal
<input type="checkbox"/> Design Patent Application	<input type="checkbox"/> Letter to Official Draftsperson
<input type="checkbox"/> Declaration(s)	<input type="checkbox"/> Notice of Appeal
<input type="checkbox"/> Drawings _____ sheet(s) (FIGS. _____)	<input type="checkbox"/> Brief (x3)
<input type="checkbox"/> Formal <input type="checkbox"/> Informal	<input checked="" type="checkbox"/> Check for \$ <u>30.00</u> Check # <u>19449</u>
<input type="checkbox"/> Verified Statement claiming small entity status	<input checked="" type="checkbox"/> Transmittal Letter (x2)
<input type="checkbox"/> Assignment and Cover Sheet	<input type="checkbox"/> Cert. of Mailing under 37 CFR 1.8(a)
	<input checked="" type="checkbox"/> Express Mail Label No. <u>EV392157773US</u>

☒ Other Petition for Filing Patent Application When Inventors Refuse to Execute under 37CFR Sec.1.47(c) (2pgs)

☒ Declaration of N. Carlucci in support of 37CFR 1.47 Filing
☒ Letter dated 9/17/04 from CuraGen to E. Fernandes
☒ Copy of PRIORITY MAIL RECEIPT
☒ Employee Agreement for Ema Fernandes (5pgs)

Date: October 8, . 2004

Express Mail No. EV392157773 US
 Date of Deposit: October 8, 2004
 MINTZ LEVIN COHN FERRIS GLOVSKY
 & POPEO PC
 ONE FINANCIAL CENTER
 BOSTON, MA 02111

194

PAY
 TO THE
 ORDER OF

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

DATE Oct 8 2004

\$ 130⁰⁰

DOLLARS



Small Business Services
 Boston, MA

FOR

15966-557A(Cura57A) Rule 47 Petition

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